

REMARKS

Claims 1-23 are currently pending. Claims 1, 4, 10, 13, 20, and 22 have been amended. Applicants acknowledge and appreciate the Examiner's indication that claims 4-5, 13-14, and 22 contain allowable subject matter and would be allowable if rewritten in independent form.

Claim 4 has been rewritten in independent form including all the limitations of claim 1. As such, claim 4 is allowable. Claim 5 depends from claim 4 and is also allowable. In addition, claim 13 has been rewritten in independent form including all the limitations of claim 10 and claim 11. As such, claim 13 is allowable. Claim 14 depends from claim 13 and is also allowable. Furthermore, claim 22 has been rewritten in independent form including all the limitations of claim 20 and claim 21. As such, claim 22 is allowable.

Before proceeding with the substantive rejections, Applicants note that the finality of the current Office action is improper. Generally, a second rejection is made final. However, there is an exception when the rejection is based on a new ground of rejection, but is not necessitated by claim amendments made by the Applicants.

Under present practice, second or any subsequent actions on the merits shall be final, except where the examiner introduces a new ground of rejection that is neither necessitated by applicant's amendment of the claims nor based on information submitted in an information disclosure statement filed during the period set forth in 37 CFR 1.97(c) with the fee set forth in 37 CFR 1.17(p).

MPEP §706.07(a). In the present case, the Examiner has introduced a new ground of rejection, namely the Jansson reference (U.S. Patent No. 6,209,745). However, the new ground of rejection was not necessitated by amendments to the claims, as Applicants made no claim amendments in the response dated November 8, 2004. Furthermore, the Examiner originally cited the Jansson reference in the Office action dated June 7, 2004. Thus, Applicants believe this case falls clearly into the exception and the finality of the present

Office action is improper. As such, Applicants respectfully request that this Office action be considered non-final and that the amendments be entered and considered.

The Examiner rejected claims 10-12, 15-21, and 23 under 35 U.S.C. §102(b) as being anticipated by Jansson (U.S. Patent No. 6,209,745).

Amended claim 10 defines an oil tank cap for an oil tank having an inlet defining an inlet aperture and an inlet axis. The cap includes a first portion that is adapted to be inserted into the inlet. The first portion is rotatable about the inlet axis between an inserted position and a sealed position. A second portion is mounted to the first portion and is movable parallel to the inlet axis relative to the first portion between a retracted position and an extended position. The rotational orientation of the second portion is substantially fixed with respect to the first portion.

Jansson does not teach or suggest an oil tank cap that includes a second portion mounted to a first portion and movable parallel to the inlet axis while maintaining the rotational orientation of the second portion substantially fixed with respect to the first portion. Rather, Jansson discloses a pop up flush-mount cap that includes a seal cap 7 that threadably engages a sleeve 43. A lid 3 fits at least partially within the seal cap 7 and is movable between a flush position and a pop up position. A pin 11 extends through a shaft 9 and engages the seal cap 7 in one of two positions. The first or flush position is illustrated in Fig. 3. In this position, the pin 11 engages a shallow recess 17 and the cap is substantially flush with the tank in which the cap is installed. In the second or pop up position, shown in Fig. 4, the pin 11 engages a deep recess 15 and the lid 3 extends above the surface of the tank. The deep recess 15 and the shallow recess are rotated relative to one another 90 degrees. As such, to move between the flush and pop up positions, the lid 3 must be depressed and rotated 90

degrees. Thus, the orientation of the lid 3 *must* change relative to the seal cap 7 in order to move between the flush and pop up positions.

In light of the foregoing, Jansson does not teach or suggest each and every limitation of claim 10. As such claim 10 is allowable. Claims 11-12 and 15-19 depend from claim 10 and are also allowable.

Amended claim 20 defines a method of assembling an oil tank having an inlet defining an inlet aperture and an inlet axis. The method includes engaging an oil tank cap with the inlet and rotating the oil tank cap about the inlet axis from an inserted position to a sealed position. The method also includes moving a movable portion of the oil tank cap from an extended position to a retracted position without significantly rotating the movable portion and maintaining the movable portion of the oil tank cap in the retracted position.

Jansson does not teach or suggest moving a movable portion of an oil tank cap from an extended position to a retracted position without significantly rotating the movable portion. Rather, as discussed with regard to claim 10, Jansson teaches a device that requires significant rotation of the lid 3 relative to the seal cap to move between a pop up position and a flush position.

In light of the foregoing, Jansson does not teach or suggest each and every limitation of claim 20. As such claim 20 is allowable. Claims 21 and 23 depend from claim 20 and are also allowable.

The Examiner rejected claims 1-3 and 6-9 under 35 U.S.C. §103(a) as being unpatentable over Jansson in view of Okuma (U.S. Patent No. 5,627,351).

Amended claim 1 discloses a motorcycle that includes a frame, a front wheel coupled to the frame, a rear wheel coupled to the frame, and an engine supported by the frame and

adapted to propel the motorcycle. An oil tank is supported by the frame and includes an inlet that defines an inlet aperture having an inlet axis. An oil tank cap is rotatable about the inlet axis between an inserted position and a sealed position. The oil tank cap has a movable portion that is movable substantially along the inlet axis without substantial rotation between a retracted position and an extended position.

As discussed, Jansson does not teach or suggest a cap that includes a movable portion that is movable substantially along the inlet axis without substantial rotation between a retracted position and an extended position. Rather, Jansson teaches a cap that requires a 90 degree rotation to move a lid between a flush and a pop up position.

Okuma does not cure the deficiencies of Jansson. Okuma is cited by the Examiner to show the parts of the motorcycle recited in claim 1. However, Okuma teaches nothing regarding a retractable cap.

In light of the foregoing, Jansson and Okuma, alone or in combination, do not teach or suggest all of the limitations recited in claim 1. As such, claim 1 is allowable. Claims 2-3 and 6-9 depend from claim 1 and are also allowable.

CONCLUSION

In light of the foregoing, Applicants respectfully request entry of the amendments and allowance of claims 1-23.

The undersigned is available for telephone consultation during normal business hours.

Respectfully submitted,



Thomas J. Otterlee
Reg. No. 48,652

Docket No.: 043210-1542-01
Michael Best & Friedrich LLP
100 East Wisconsin Avenue
Milwaukee, Wisconsin 53202-4108

(414) 271-6560